IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

**O R D E R**

S.B. CIVIL WRIT PETITION NO. 7523/2004

RATAN SINGH Vs. MADAN LAL & ANR.

DATE: 21.08.2007.

**HON'BLE MR. JUSTICE K.S. RATHORE**

Mr. D.K. Bhardwaj for the petitioner.
None present for the respondents.

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None appeared on behalf of the respondents despite service.

The present writ petition is directed against the order dated 23.01.2004 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate Fist Class No.1, Alwar and the order dated 31.07.2004 passed by the Additional District & Sessions Judge No.1, Alwar in Civil Appeal No. 18/2004, rejecting the appeal filed by the petitioner against the order dated 23.01.2004 passed in Civil Suit No. 778/1997, whereby the application filed by the non-petitioner No.1 under Section 13 Rule 5 of the Rent Control Act has been allowed and the application under Section 5 of the Limitation Act filed by the petitioner has been rejected and consequently opportunity to defend the

case has been closed.

Learned counsel appearing for the petitioner has placed reliance on the judgment rendered by this Court in the case of **J.K. Motors & Others Vs. Bhagwati Narain, 1987(2) WLN 464,** wherein this Court has held that it was common ground that the delay was not more than 10 days and under the law the court is competent to condone the delay of 15 days.

Here in the instant case, the rent was required to be deposited by the petitioner on 15.11.2001 but the same was deposited on 17.11.2001 and thus the rent was deposited after delay of two days.

Having considered the ratio decided by this Court in the case of **J.K. Motors & others (supra)** and in the interest of justice, I allow the application under Section 5 of the Limitation Act to condone the delay of two days and the impugned order passed by the Additional District & Sessions Judge No.1, Alwar dated 31.07.2004 upholding the order passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate No.1, Alwar dated 23.01.2004 is hereby quashed and set aside. The Additional Civil Judge (Jr. Division) No.1, Alwar is directed to decide the civil suit No. 778/1997 on its merit after giving opportunity of being heard to the defendant-petitioner to defend his case.

The ex parte interim order dated 01.11.2004 granted by this Court is hereby rejected. The stay application also stands rejected.

(K.S. RATHORE),J.

/KKC/